

AMENDED IN SENATE APRIL 13, 2005

AMENDED IN SENATE MARCH 29, 2005

SENATE BILL

No. 435

Introduced by Senator Hollingsworth

February 17, 2005

An act to amend Section 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 435, as amended, Hollingsworth. Housing: density bonuses.

The Planning and Zoning Law requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the developer with a density bonus and other incentives or concessions for the production of lower income housing units or the donation of land within the development if the developer meets certain requirements, including a requirement that the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents.

This bill would include within those eligibility requirements the construction of a mobilehome park that limits residency based on age requirements for housing for older persons and the construction, for persons and families of moderate income, of a community apartment project and a stock cooperative.

The bill would require ~~a city, county, or city and county to permit an applicant for a density bonus to receive~~ an additional incentive or concession, as specified, for projects in which the ~~developer~~ *applicant* is entitled to a density bonus, but ~~can use~~ *uses* less than 50% of the density bonus.

Existing law prohibits a city, county, or city and county from applying a development standard that has the effect of precluding the construction of a development meeting the affordable housing criteria that entitles the developer to a density bonus and incentives or concessions. Existing law authorizes a developer to apply for a waiver or reduction of development standards and requires the developer to show that the waiver or modification is necessary to make the housing units economically feasible.

This bill would delete the requirement that the developer show that the waiver or modification is necessary to make the housing units economically feasible.

The local administrative requirements imposed by the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 65915 of the Government Code is
2 amended to read:
3 65915. (a) When an applicant seeks a density bonus for a
4 housing development within, or for the donation of land for
5 housing within, the jurisdiction of a city, county, or city and
6 county, that local government shall provide the applicant
7 incentives or concessions for the production of housing units and
8 child care facilities as prescribed in this section. All cities,
9 counties, or cities and counties shall adopt an ordinance that
10 specifies how compliance with this section will be implemented.
11 (b) (1) A city, county, or city and county shall grant one
12 density bonus, the amount of which shall be as specified in
13 subdivision (f), and incentives or concessions, as described in
14 subdivision (d), when a proposed housing development,
15 excluding any units permitted by the density bonus awarded

pursuant to this section, will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low-and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall ~~comply with~~ *be set at an affordable rent as defined in Section 50053 of the Health and Safety Code.* ~~The cost of owner-occupied housing shall comply with~~ *Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.*

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and

1 families of moderate income, as defined in Section 50093 of the
2 Health and Safety Code, and that the units are offered at an
3 affordable housing cost, as that cost is defined in Section 50052.5
4 of the Health and Safety Code. Upon resale, the seller of the unit
5 shall retain the value of any improvements, the downpayment,
6 and the seller's proportionate share of appreciation. The local
7 government shall recapture any initial subsidy and its
8 proportionate share of appreciation, which shall then be used
9 within three years for any of the purposes described in
10 subdivision (e) of Section 33334.2 of the Health and Safety Code
11 that promote home ownership.

12 (A) For purposes of this subdivision, the local government's
13 initial subsidy shall be equal to the fair market value of the home
14 at the time of initial sale minus the initial sale price to the
15 moderate income household, plus the amount of any
16 downpayment assistance or mortgage assistance. If upon resale
17 the market value is lower than the initial market value, market
18 value shall be the value at the time of the resale.

19 (B) For purposes of this subdivision, the local government's
20 proportionate share of appreciation shall be equal to the
21 percentage by which the fair market value of the home at the
22 time of initial sale exceeded the initial sale price to the moderate
23 income household.

24 of the Health and Safety Code. The local government shall
25 enforce an equity-sharing agreement, unless it is in conflict with
26 the requirements of another public funding source or law. The
27 following apply to the equity-sharing agreement:

28 (A) Upon resale, the seller of the unit shall retain the value of
29 any improvements, the downpayment, and the seller's
30 proportionate share of appreciation. The local government shall
31 recapture any initial subsidy and its proportionate share of
32 appreciation, which shall then be used within three years for any
33 of the purposes described in subdivision (e) of Section 33334.2 of
34 the Health and Safety Code that promote homeownership.

35 (B) For purposes of this subdivision, the local government's
36 initial subsidy shall be equal to the fair market value of the home
37 at the time of initial sale minus the initial sale price to the
38 moderate income household, plus the amount of any
39 downpayment assistance or mortgage assistance. If upon resale
40 the market value is lower than the initial market value, then the

1 *value at the time of the resale shall be used as the initial market*
2 *value.*

3 *(C) For purposes of this subdivision, the local government's*
4 *proportionate share of appreciation shall be equal to the ratio of*
5 *the initial subsidy to the fair market value of the home at the time*
6 *of initial sale.*

7 (d) (1) An applicant for a density bonus pursuant to
8 subdivision (b) may submit to a city, county, or city and county a
9 proposal for the specific incentives or concessions that the
10 applicant requests pursuant to this section, and may request a
11 meeting with the city, county, or city and county. The city,
12 county, or city and county shall grant the concession or incentive
13 requested by the applicant unless the city, county, or city and
14 county makes a written finding, based upon substantial evidence,
15 of either of the following:

16 (A) The concession or incentive is not required in order to
17 provide for affordable housing costs, as defined in Section
18 50052.5 of the Health and Safety Code, or for rents for the
19 targeted units to be set as specified in subdivision (c).

20 (B) The concession or incentive would have a specific adverse
21 impact, as defined in paragraph (2) of subdivision (d) of Section
22 65589.5, upon public health and safety or the physical
23 environment or on any real property that is listed in the
24 California Register of Historical Resources and for which there is
25 no feasible method to satisfactorily mitigate or avoid the specific
26 adverse impact without rendering the development unaffordable
27 to low- and moderate-income households.

28 (2) The applicant shall receive the following number of
29 incentives or concessions:

30 (A) One incentive or concession for projects that include at
31 least 10 percent of the total units for lower income households, at
32 least 5 percent for very low income households, or at least 10
33 percent for persons and families of moderate income in a
34 common interest development.

35 (B) Two incentives or concessions for projects that include at
36 least 20 percent of the total units for lower income households, at
37 least 10 percent for very low income households, or at least 20
38 percent for persons and families of moderate income in a
39 common interest development.

1 (C) Three incentives or concessions for projects that include at
2 least 30 percent of the total units for lower income households, at
3 least 15 percent for very low income households, or at least 30
4 percent for persons and families of moderate income in a
5 common interest development.

6 (D) For projects in which the applicant is entitled to a density
7 bonus, ~~but can utilize~~ *utilizes* less than 50 percent of the density
8 bonus, *the applicant shall receive* one additional incentive or
9 concession ~~shall be permitted~~ in addition to those specified in
10 subparagraphs (A), (B), and (C).

11 (3) The applicant may initiate judicial proceedings if the city,
12 county, or city and county refuses to grant a requested density
13 bonus, incentive, or concession. If a court finds that the refusal to
14 grant a requested density bonus, incentive, or concession is in
15 violation of this section, the court shall award the plaintiff
16 reasonable attorney's fees and costs of suit. Nothing in this
17 subdivision shall be interpreted to require a local government to
18 grant an incentive or concession that has a specific, adverse
19 impact, as defined in paragraph (2) of subdivision (d) of Section
20 65589.5, upon health, safety, or the physical environment, and
21 for which there is no feasible method to satisfactorily mitigate or
22 avoid the specific adverse impact. Nothing in this subdivision
23 shall be interpreted to require a local government to grant an
24 incentive or concession that would have an adverse impact on
25 any real property that is listed in the California Register of
26 Historical Resources. The city, county, or city and county shall
27 establish procedures for carrying out this section, that shall
28 include legislative body approval of the means of compliance
29 with this section. The city, county, or city and county shall also
30 establish procedures for waiving or modifying development and
31 zoning standards that would otherwise inhibit the utilization of
32 the density bonus on specific sites. These procedures shall
33 include, but not be limited to, such items as minimum lot size,
34 side yard setbacks, and placement of public works
35 improvements.

36 (e) In no case may a city, county, or city and county apply any
37 development standard that will have the effect of precluding the
38 construction of a development meeting the criteria of subdivision
39 (b) at the densities or with the concessions or incentives
40 permitted by this section. An applicant may submit to a city,

county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

~~(f) (1) For the purposes of this chapter, except as provided in paragraph (2), "density bonus" means a density increase of at least the percentage established in this subdivision or subdivision (g), unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential~~
(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b), as follows.

(1) For housing developments meeting the criteria of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

1	Percentage Low-Income Units	Percentage Density Bonus
2	10	20
3	11	21.5
4	12	23
5	13	24.5
6	14	26
7	15	27.5
8	17	30.5
9	18	32
10	19	33.5
11	20	35

12
13 *(2) For housing developments meeting the criteria of*
14 *paragraph (2) of subdivision (b), the density bonus shall be*
15 *calculated as follows:*

16	Percentage Very Low Income Units	Percentage Density Bonus
17	5	20
18	6	22.5
19	7	25
20	8	27.5
21	9	30
22	10	32.5
23	11	35

24
25
26 *(3) For housing developments meeting the criteria of*
27 *paragraph (3) of subdivision (b), the density bonus shall be 20*
28 *percent.*

29 *(4) For housing developments meeting the criteria of*
30 *paragraph (4) of subdivision (b), the density bonus shall be*
31 *calculated as follows:*

	Percentage Moderate-Income Units	Percentage Density Bonus
1		
2	10	5
3	11	6
4	12	7
5	13	8
6	14	9
7	15	10
8	16	11
9	17	12
10	18	13
11	19	14
12	20	15
13	21	16
14	22	17
15	23	18
16	24	19
17	25	20
18	26	21
19	27	22
20	28	23
21	29	24
22	30	25
23	31	26
24	32	27
25	33	28
26	34	29
27	35	30
28	36	31
29	37	32
30	38	33
31	39	34
32	40	35

33

34 ~~(2)~~

35 (5) All density calculations resulting in fractional units shall

36 be rounded up to the next whole number. The granting of a

37 density bonus shall not be interpreted, in and of itself, to require

38 a general plan amendment, local coastal plan amendment, zoning

39 change, or other discretionary approval. As used in subdivisions

40 subdivision (b), “total units” or “total dwelling units” does not

1 include units permitted by a density bonus awarded pursuant to
2 this section or any local law granting a greater density bonus.
3 The density bonus provided by this section shall apply to housing
4 developments consisting of five or more dwelling units.

5 ~~(3) For the purposes of this chapter, if a development does not~~
6 ~~meet the requirements of paragraph (1), (2), or (3) of subdivision~~
7 ~~(b), but the applicant agrees or proposes to construct a common~~
8 ~~interest development, as defined in Section 1351 of the Civil~~
9 ~~Code, in which at least 10 percent of the total dwelling units are~~
10 ~~reserved for persons and families of moderate income, as defined~~
11 ~~in Section 50093 of the Health and Safety Code, a “density~~
12 ~~bonus” of at least 5 percent shall be granted, unless a lesser~~
13 ~~percentage is elected by the applicant, over the otherwise~~
14 ~~maximum allowable residential density under the applicable~~
15 ~~zoning ordinance and land use element of the general plan as of~~
16 ~~the date of application by the applicant to the city, county, or city~~
17 ~~and county. For each 1-percent increase above 10 percent of the~~
18 ~~percentage of units affordable to moderate-income households,~~
19 ~~the density bonus shall be increased by 1 percent up to a~~
20 ~~maximum of 35 percent. All density calculations resulting in~~
21 ~~fractional units shall be rounded up to the next whole number.~~
22 ~~The granting of a density bonus shall not be interpreted, in and of~~
23 ~~itself, to require a general plan amendment, local coastal plan~~
24 ~~amendment, zoning change, or other discretionary approval. The~~
25 ~~density bonus shall not be included when determining the~~
26 ~~number of housing units that is equal to 10 percent of the total.~~
27 ~~The density bonus shall apply to housing developments~~
28 ~~consisting of five or more dwelling units.~~

29 (g) (1) When an applicant for a tentative subdivision map,
30 parcel map, or other residential development approval donates
31 land to a city, county, or city and county as provided for in this
32 subdivision, the applicant shall be entitled to a 15-percent
33 increase above the otherwise maximum allowable residential
34 density under the applicable zoning ordinance and land use
35 element of the general plan for the entire development, as
36 follows:

	Percentage Very Low Income	Percentage Density Bonus
1		
2	10	15
3	11	16
4	12	17
5	13	18
6	14	19
7	15	20
8	16	21
9	17	22
10	18	23
11	19	24
12	20	25
13	21	26
14	22	27
15	23	28
16	24	29
17	25	30
18	26	31
19	27	32
20	28	33
21	29	34
22	30	35

23
24 (2) This increase shall be in addition to any increase in density
25 mandated by subdivision (b), up to a maximum combined
26 mandated density increase of 35 percent if an applicant seeks
27 both the increase required pursuant to this subdivision and
28 subdivision (b). All density calculations resulting in fractional
29 units shall be rounded up to the next whole number. Nothing in
30 this subdivision shall be construed to enlarge or diminish the
31 authority of a city, county, or city and county to require a
32 developer to donate land as a condition of development. An
33 applicant shall be eligible for the increased density bonus
34 described in this subdivision if all of the following conditions are
35 met:

36 (A) The applicant donates and transfers the land no later than
37 the date of approval of the final subdivision map, parcel map, or
38 residential development application.

39 (B) The developable acreage and zoning classification of the
40 land being transferred are sufficient to permit construction of

1 units affordable to very low income households in an amount not
2 less than 10 percent of the number of residential units of the
3 proposed development.

4 (C) The transferred land is at least one acre in size or of
5 sufficient size to permit development of at least 40 units, has the
6 appropriate general plan designation, is appropriately zoned for
7 development as affordable housing, and is or will be served by
8 adequate public facilities and infrastructure. The land shall have
9 appropriate zoning and development standards to make the
10 development of the affordable units feasible. No later than the
11 date of approval of the final subdivision map, parcel map, or of
12 the residential development, the transferred land shall have all of
13 the permits and approvals, other than building permits, necessary
14 for the development of the very low income housing units on the
15 transferred land, except that the local government may subject
16 the proposed development to subsequent design review to the
17 extent authorized by subdivision (i) of Section 65583.2 if the
18 design is not reviewed by the local government prior to the time
19 of transfer.

20 (D) The transferred land and the affordable units shall be
21 subject to a deed restriction ensuring continued affordability of
22 the units consistent with paragraphs (1) and (2) of subdivision
23 (c), which shall be recorded on the property at the time of
24 dedication.

25 (E) The land is transferred to the local agency or to a housing
26 developer approved by the local agency. The local agency may
27 require the applicant to identify and transfer the land to the
28 developer.

29 (F) The transferred land shall be within the boundary of the
30 proposed development or, if the local agency agrees, within
31 one-quarter mile of the boundary of the proposed development.

32 (h) (1) When an applicant proposes to construct a housing
33 development that conforms to the requirements of subdivision (b)
34 and includes a child care facility that will be located on the
35 premises of, as part of, or adjacent to, the project, the city,
36 county, or city and county shall grant either of the following:

37 (A) An additional density bonus that is an amount of square
38 feet of residential space that is equal to or greater than the
39 amount of square feet in the child care facility.

1 (B) An additional concession or incentive that contributes
2 significantly to the economic feasibility of the construction of the
3 child care facility.

4 (2) The city, county, or city and county shall require, as a
5 condition of approving the housing development, that the
6 following occur:

7 (A) The child care facility shall remain in operation for a
8 period of time that is as long as or longer than the period of time
9 during which the density bonus units are required to remain
10 affordable pursuant to subdivision (c).

11 (B) Of the children who attend the child care facility, the
12 children of very low income households, lower income
13 households, or families of moderate income shall equal a
14 percentage that is equal to or greater than the percentage of
15 dwelling units that are required for very low income households,
16 lower income households, or families of moderate income
17 pursuant to subdivision (b).

18 (3) Notwithstanding any requirement of this subdivision, a
19 city, county, or a city and county shall not be required to provide
20 a density bonus or concession for a child care facility if it finds,
21 based upon substantial evidence, that the community has
22 adequate child care facilities.

23 (4) “Child care facility,” as used in this section, means a child
24 day care facility other than a family day care home, including,
25 but not limited to, infant centers, preschools, extended day care
26 facilities, and schoolage child care centers.

27 (i) “Housing development,” as used in this section, means one
28 or more groups of projects for residential units constructed in the
29 planned development of a city, county, or city and county. For
30 the purposes of this section, “housing development” also includes
31 a subdivision or common interest development, as defined in
32 Section 1351 of the Civil Code, approved by a city, county, or
33 city and county and consists of residential units or unimproved
34 residential lots and either a project to substantially rehabilitate
35 and convert an existing commercial building to residential use or
36 the substantial rehabilitation of an existing multifamily dwelling,
37 as defined in subdivision (d) of Section 65863.4, where the result
38 of the rehabilitation would be a net increase in available
39 residential units. For the purpose of calculating a density bonus,
40 the residential units do not have to be based upon individual

1 subdivision maps or parcels. The density bonus shall be
2 permitted in geographic areas of the housing development other
3 than the areas where the units for the lower income households
4 are located.

5 (j) The granting of a concession or incentive shall not be
6 interpreted, in and of itself, to require a general plan amendment,
7 local coastal plan amendment, zoning change, or other
8 discretionary approval. This provision is declaratory of existing
9 law.

10 (k) For the purposes of this chapter, concession or incentive
11 means any of the following:

12 (1) A reduction in site development standards or a
13 modification of zoning code requirements or architectural design
14 requirements that exceed the minimum building standards
15 approved by the California Building Standards Commission as
16 provided in Part 2.5 (commencing with Section 18901) of
17 Division 13 of the Health and Safety Code, including, but not
18 limited to, a reduction in setback and square footage
19 requirements and in the ratio of vehicular parking spaces that
20 would otherwise be required that results in identifiable,
21 financially sufficient, and actual cost reductions.

22 (2) Approval of mixed use zoning in conjunction with the
23 housing project if commercial, office, industrial, or other land
24 uses will reduce the cost of the housing development and if the
25 commercial, office, industrial, or other land uses are compatible
26 with the housing project and the existing or planned development
27 in the area where the proposed housing project will be located.

28 (3) Other regulatory incentives or concessions proposed by the
29 developer or the city, county, or city and county that result in
30 identifiable, financially sufficient, and actual cost reductions.

31 This subdivision does not limit or require the provision of
32 direct financial incentives for the housing development,
33 including the provision of publicly owned land, by the city,
34 county, or city and county, or the waiver of fees or dedication
35 requirements.

36 (l) Nothing in this section shall be construed to supersede or in
37 any way alter or lessen the effect or application of the California
38 Coastal Act (Division 20 (commencing with Section 30000) of
39 the Public Resources Code

(m) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(n) For purposes of this section, the following definitions shall apply:

(1) “Development standard” includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) “Maximum allowable residential density” means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

(o) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedrooms: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide “onsite parking” through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request additional parking incentives or concessions beyond those provided in this section, subject to subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service

- 1 charges, fees, or assessments sufficient to pay for the program or
- 2 level of service mandated by this act, within the meaning of
- 3 Section 17556 of the Government Code.

O